

AMENDED IN SENATE JULY 29, 2004

AMENDED IN SENATE JULY 6, 2004

AMENDED IN SENATE JUNE 24, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2006

Introduced by Assembly Member Nunez

February 13, 2004

An act to amend Sections 365 and 366 of, to add Chapter 2.4 (commencing with Section 400) to Part 1 of Division 1 of, and to repeal ~~Sections 330 and 366~~ *Section 330* of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2006, as amended, Nunez. Electrical restructuring: Reliable Electric Service Act of 2004.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix just and reasonable rates and charges. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the

commission, pursuant to electrical restructuring, to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would ~~repeal the requirement that the commission authorize direct transactions between electricity suppliers and retail end-use customers and would instead~~ authorize the commission *on or before December 31, 2005*, to adopt rules and regulations to implement a core and noncore model under which the utility's noncore customers may elect to receive electric service from the electrical corporation ~~or~~, from an electric service provider, *or competitive service from a provider of last resort. Upon full implementation of these rules and regulations, existing law would become inoperative that (1) requires the commission to authorize direct transactions between electricity suppliers and retail and end-use customers and (2) requires specified commission participation in certain Federal Energy Regulatory Commission matters.* An electrical corporation would have no obligation to procure electricity or meet resource adequacy requirements for noncore customers that elect to enter into a direct transaction for the purchase of electricity.

The bill would require costs incurred by an electrical corporation to implement transactions on behalf of direct-access customers to be recovered from those customers. The bill would require electrical corporations, *commencing January 1, 2006*, to file at least every 3 years, and for the commission to approve, a long-term integrated resource plan, as specified, ~~sufficient to fulfill the utility's duty to serve while achieving best value for ratepayers at just and reasonable rates.~~ The bill would provide for the recovery of initial capital investment made ~~pursuant to an approved long-term integrated resource plan by an electrical corporation and found reasonable by the commission.~~ *The bill would also provide for the recovery of an electrical corporation's full cost of contracting for generation resources.* ~~The bill would require that no costs incurred by the electrical corporation to implement direct transactions on behalf of direct access customers, shall be recovered from the utility's bundled customers. The~~

The bill would require the commission, by July 1, 2005, to prepare and submit to the Governor and the Legislature, a comprehensive plan

to streamline the transmission siting process, *and to submit a prescribed report concerning siting and authorization of upgrades, improvements, and additions to each electrical corporation's transmission system infrastructure.* The bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure adequate physical generating capacity is available, dedicated to serve all load requirements to meet peak demand plus requisite planning and operating reserves, and would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities *and their customers*, excluding a local publicly owned electric utility, the State Water Project, and customer generation, as defined. The bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability, be equitably borne and recoverable from all customers on a pro rata, fully compensatory basis. ~~The bill would authorize the commission to adopt rules and regulations implementing a core and noncore model for retail electric service meeting certain requirements, by December 31, 2005, and would require the commission to adopt rules and regulations to ensure that electrical corporations meet their obligation to provide customers with reliable electric service at just and reasonable rates.~~

The bill would authorize the commission to order electrical corporations to procure, schedule, and dispatch capacity to meet resource requirements on behalf of all customer load, subject to prescribed conditions, including standards for Independent System Operator instructions, market power mitigation measures to ensure the recovery of costs of meeting resource adequacy requirements, and standards for the allocation and recovery of those costs.

Existing law states the intent of the Legislature and makes various findings and declarations with respect to electrical restructuring.

This bill would repeal that statement of intent and the legislative findings and declarations.

A violation of the Public Utilities Act or an order of the commission is a crime under existing law.

Because a violation of the bill's provisions would be a violation of the act, the bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) An adequate and reliable supply of electricity is essential to
4 the health, safety, and welfare of all California consumers.
- 5 (b) Safe, reliable, and affordable electric service is of utmost
6 importance to the consumers of this state and its economy.
- 7 (c) Electrical corporations have an obligation to provide their
8 customers with reliable electric service at just and reasonable rates.
- 9 (d) In order to provide safe, reliable, and affordable electric
10 service to consumers, electrical corporations must provide needed
11 resources, including cost-effective energy efficiency and other
12 demand reduction measures, utility-owned and procured
13 generation, new and repowered generation, cogeneration,
14 renewable generation, transmission, distribution, and an
15 adequately sized, well-trained workforce, in a manner that
16 produces the best value for ratepayers at just and reasonable rates.
- 17 (e) In order to ensure that investments in resources are made in
18 a manner that produces the best value for ratepayers, electrical
19 corporations should prepare a long-term integrated resource plan
20 for commission review and approval, that achieves a diversified
21 portfolio of efficient, cost-effective, environmentally responsible
22 supply and demand resources.
- 23 (f) *In order to ensure that a long-term integrated resource plan*
24 *will result in investments in physical generating capacity*
25 *dedicated to serving all load requirements is available to meet*
26 *peak demand and planning and operating reserves, at locations*
27 *and at times as may be necessary to ensure local area reliability*
28 *and system reliability, the commission shall adopt resource*
29 *adequacy requirements.*
- 30 (g) In order to ensure that the long-term integrated resource
31 plan achieves a diversified portfolio of efficient, cost-effective,

1 environmentally responsible, supply and demand resources,
2 resource adequacy requirements shall be met first through
3 cost-effective energy efficiency and other demand reduction
4 measures.

5 ~~(g)~~

6 (h) In order to ensure that a long-term integrated resource plan
7 will result in investments in resources sufficient to provide reliable
8 electric service to customers of an electrical corporation without
9 stranding costs or shifting costs, a stable and predictable customer
10 base is necessary and essential.

11 ~~(h)~~

12 (i) In order to attract sufficient capital to make investments in
13 needed resources, there must be assurance that reasonable costs
14 and investments, including a return of and on direct investments,
15 and payments made to third parties under contract with an
16 electrical corporation for non-utility-owned generation, are
17 recovered in rates.

18 ~~(i)~~

19 (j) California consumers will not receive reliable and
20 affordable electric service, nor will consumers avoid repetition of
21 past problems with excessive wholesale electricity prices, rolling
22 blackouts, and long-term supply contracts that threaten consumers
23 with billions of dollars in above-market electricity costs, unless a
24 durable framework is enacted to provide regulatory certainty and
25 market stability in support of investment in needed efficient,
26 cost-effective, environmentally responsible resources at just and
27 reasonable rates.

28 ~~(j)~~

29 (k) Protecting the interests of consumers by ensuring that
30 investments *made to provide safe, reliable electric service* are
31 prudent and cost effective, should be the highest priority of
32 California regulatory policy and action.

33 ~~(k)~~

34 (l) The Public Utilities Commission has an obligation to
35 provide an open regulatory forum where all persons affected by
36 public utility service and rates *or otherwise affected by decisions*
37 *made by the commission*, can observe and participate in the
38 decisionmaking process.

39 SEC. 2. Section 330 of the Public Utilities Code is repealed.

1 SEC. 3. Section 365 of the Public Utilities Code is amended
2 to read:

3 365. The commission shall facilitate the efforts of the state's
4 electrical corporations to develop and obtain authorization from
5 the Federal Energy Regulatory Commission for the creation and
6 operation of an Independent System Operator for the
7 determination of which transmission and distribution facilities are
8 subject to the exclusive jurisdiction of the commission, and for
9 approval, to the extent necessary, of the cost recovery mechanism
10 established as provided in Sections 367 to 376, inclusive. The
11 commission shall also participate fully in all proceedings before
12 the Federal Energy Regulatory Commission in connection with
13 the Independent System Operator and shall encourage the Federal
14 Energy Regulatory Commission to adopt protocols and
15 procedures that strengthen the reliability of the interconnected
16 transmission grid, encourage all publicly owned utilities in
17 California to become full participants, and maximize
18 enforceability of such protocols and procedures by all market
19 participants.

20 ~~SEC. 4. Section 366 of the Public Utilities Code is repealed.~~

21 *This section shall become inoperative upon full implementation*
22 *of Section 400.21. The commission shall report to the Legislature*
23 *when Section 400.21 is fully implemented.*

24 SEC. 4. Section 366 of the Public Utilities Code is amended
25 to read:

26 366. (a) The commission shall take actions as needed to
27 facilitate direct transactions between electricity suppliers and
28 end-use customers. Customers shall be entitled to aggregate their
29 electrical loads on a voluntary basis, provided that each customer
30 does so by a positive written declaration. If no positive declaration
31 is made by a customer, that customer shall continue to be served
32 by the existing electrical corporation or its successor in interest,
33 except aggregation by community choice aggregators,
34 accomplished pursuant to Section 366.2.

35 (b) Aggregation of customer electrical load shall be authorized
36 by the commission for all customer classes, including, but not
37 limited, to small commercial or residential customers.
38 Aggregation may be accomplished by private market aggregators,
39 special districts, or on any other basis made available by market
40 opportunities and agreeable by positive written declaration by

individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.

(c) This section shall become inoperative upon full implementation of Section 400.21. The commission shall report to the Legislature when Section 400.21 is fully implemented.

SEC. 5. Chapter 2.4 (commencing with Section 400) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

CHAPTER 2.4. RELIABLE ELECTRIC SERVICE ACT OF 2004

400. This chapter shall be known, and may be cited, as the Reliable Electric Service Act of 2004.

400.1. (a) An electrical corporation has an obligation to, *and shall*, plan for and provide its customers with reliable electric service at just and reasonable rates, pursuant to Section 451, *including those customers that purchase standby service from the electrical corporation.*

(b) For purposes of this chapter, “electric service” includes providing adequate and efficient resources, including cost-effective energy efficiency and other demand reduction resources, utility-owned and procured generation resources, such as new and repowered generation resources, cogeneration, and renewable generation resources, transmission and distribution resources, metering, billing, and employing an adequately sized, well-trained utility workforce.

(c) Notwithstanding subdivisions (a) and (b), an electrical corporation has no obligation to ~~procure plan for or procure, or to bill or meter,~~ electricity or meet resource adequacy requirements for any customer that elects to enter into a direct transaction. ~~No costs~~ *Costs* incurred by the electrical corporation to implement direct transactions on behalf of direct access customers, shall be recovered from ~~the utility’s bundled customers~~ *those direct access customers.*

400.5. (a) To ensure that adequate investments are made in resources necessary to provide customers with reliable electric service, the commission shall authorize an electrical corporation to provide efficient, cost-effective resources, including cost-effective energy efficiency and demand reduction resources, utility-owned and procured generation resources, ~~such as which~~

1 *may include, among other resources, new and repowered*
2 *generation resources, cogeneration, and renewable generation*
3 *resources, consistent with the electrical corporation's procurement*
4 *plan adopted pursuant to Section 454.5.*

5 (b) The commission shall, after public hearing, approve and
6 thereafter maintain just and reasonable rates sufficient to ensure
7 that the electrical corporation fully recovers ~~the initial capital~~
8 ~~investment in the resources necessary to provide customers with~~
9 ~~reliable electric service, which is specified at the time of the~~
10 ~~application for a certificate of public convenience and necessity,~~
11 ~~if the initial capital investment is found reasonable by the~~
12 ~~commission.~~

13 ~~(c) In determining the electrical corporation's full costs of~~
14 ~~contracting for generation resources with another entity in~~
15 ~~accordance with Section 454.5 or Article 16 (commencing with~~
16 ~~Section 399.11), the commission shall take into account any~~
17 ~~collateral requirements and debt equivalence associated with the~~
18 ~~contract, in a manner determined by the commission to provide the~~
19 ~~best value to ratepayers.~~

20 ~~(d) both of the following:~~

21 (1) *The electrical corporation's initial capital investment found*
22 *reasonable by the commission pursuant to Section 1005.5.*

23 (2) *The electrical corporation's full cost of contracting for*
24 *generation resources with another entity in accordance with*
25 *Sections 454.5 and Article 16 (commencing with Section 399.11)*
26 *of Chapter 2.3, including the reasonable costs for any collateral*
27 *requirements and debt equivalence, in a manner determined by the*
28 *commission to provide the best value to ratepayers.*

29 (c) Nothing in this chapter alters the requirements of ~~Section~~
30 ~~454.5, 455.5, 463, or 1005.5. Section 451, 454.5, 455.5, 463, or~~
31 ~~1005.5.~~

32 ~~(e)–~~

33 (d) It is the intent of the Legislature in enacting this section to
34 reaffirm California's traditional regulatory compact, under which
35 an electrical corporation has the obligation to provide reliable
36 electric service at just and reasonable rates, and the commission
37 ensures that the electrical corporation is afforded the means to
38 carry out this obligation, specifically including a reasonable
39 opportunity to fully recover from all customers *of the electrical*
40 *corporation*, in a manner determined by the commission pursuant

to this code, a return of, and a reasonable return on, reasonable investments in utility-owned generation, transmission, and distribution resources that are necessary to meet the utility's obligation, the utility's reasonable costs to operate and maintain those resources, and the utility's reasonable costs for nonutility generation resources procured in accordance with Section 454.5 and Article 16 (commencing with Section 399.11).

400.10. (a) To ensure that adequate investments necessary to meet the electrical corporation's obligation to provide reliable electric service are made, every electrical corporation shall, *commencing on January 1, 2006, and at least every three years thereafter*, prepare a long-term integrated resource plan.

(b) The long-term integrated resource plan shall accomplish all of the following:

(1) Ensure that adequate resources are identified to serve the utility's customers reliably.

(2) Provide for investments in, *or procurement of*, resources proposed pursuant to Section 454.5 and Article 16 (commencing with Section 399.11).

(3) Be consistent with Section 701.1 and Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code.

(4) Achieve a diversified portfolio of efficient, cost-effective, and environmentally responsible supply and demand resources to serve the utility's customers.

(5) Provide for investments in all practicable and cost-effective energy efficiency and load management resources.

(6) Provide for investments in, or procurement of, necessary ~~conventional~~ generation resources, ~~including~~ *and may include* extensions, renewals, or renegotiations of contracts for existing generation resources, new or repowered generation, and cogeneration projects.

(7) Provide that an electrical corporation meets resource adequacy requirements established by the commission pursuant to Section 400.22, for the electric load served by the electrical corporation. For purposes of this chapter, "electric load served by the electrical corporation" does not include the electrical load of customers who elect to enter into a direct transaction.

(8) Include demand and supply forecasts for 5- and 10-year periods. The demand forecasts shall reflect all energy efficiency and load management programs approved by the commission.

(c) The long-term integrated resource plan may provide for investments in distributed generation that would improve electrical system reliability, thereby deferring or eliminating investments in distribution facilities that would otherwise be needed to improve system reliability, by either direct investment by the electrical corporation or under contract with a retail customer or a third party, if the commission finds that the investment in distributed generation would accomplish each of the following:

(1) Result in overall cost savings for ratepayers due to deferral or elimination of electric distribution projects.

(2) Provide the required reliability and operational characteristics to support adequate service reliability to customers in the affected area.

(3) If the distributed generation is provided under contract with a retail customer or a third party to reduce distribution system loads, the retail customer or third party shall maintain physical assurance that the contracted load reduction will be available during all required time periods.

400.11. The commission shall, after public hearing, review and approve a long-term integrated resource plan for every electrical corporation, including those revisions to the plan that the commission determines are necessary to meet the requirements of Section 400.10 and achieve best value for utility customers.

400.15. In accordance with an electrical corporation's long-term integrated resource plan approved pursuant to Section 400.11, and consistent with Sections 454.5 and 701.1 and Article 16 (commencing with Section 399.11), to meet resource adequacy requirements, each electrical corporation shall manage a diversified, efficient, cost-effective, environmentally responsible portfolio of non-utility-owned generation under contract with the utility, and utility-owned generation, combining the potential benefits of a competitive wholesale market, including operating efficiencies and lower prices, with the stability of cost-of-service generation resources, to achieve best value for ratepayers at just and reasonable rates.

1 400.18. (a) The commission shall, on or before July 1, 2005,
 2 prepare and submit to the Governor and the Legislature, a
 3 comprehensive plan to streamline the transmission siting process.
 4 The plan shall, at a minimum, include recommendations to
 5 eliminate regulatory overlap and duplication, and
 6 recommendations to reduce the time needed to process a request
 7 for transmission improvements. The commission shall consult
 8 with the State Energy Resources Conservation and Development
 9 Commission, the Independent System Operator, electrical
 10 corporations, and interested parties in the development and
 11 preparation of the plan.

12 (b) *On or before December 31, 2005, the commission shall*
 13 *prepare and transmit a report to the Legislature summarizing the*
 14 *status of proceedings for each site for authorization of*
 15 *construction of all upgrades, improvements, or additions to the*
 16 *transmission system infrastructure determined by the electrical*
 17 *corporation to be necessary to ensure reliability and for which the*
 18 *electrical corporation has filed an application for a certificate of*
 19 *public convenience and necessity. The report shall include action*
 20 *that the commission has taken or proposes to take to facilitate the*
 21 *siting and authorization of those facilities and the schedule for*
 22 *completion in order to address the reliability needs identified by*
 23 *the electrical corporation. To the extent that the commission*
 24 *determines that the transmission upgrade, improvement, or*
 25 *addition is not needed, the commission shall identify the*
 26 *alternative it intends to pursue in order to ensure reliability. The*
 27 *commission shall update its report on January 1, 2006, and*
 28 *annually on January 1 thereafter.*

29 400.21. (a) On or before December 31, 2005, the
 30 commission may adopt rules and regulations to implement a core
 31 and noncore model for retail electric service, whereby core
 32 customers shall receive ~~reliable~~ electric service from an electrical
 33 corporation on a regulated basis and noncore customers may
 34 choose to assume the full price risk of purchasing electricity from
 35 the retail electric market *or to receive competitive service from a*
 36 *provider of last resort, consistent with the objectives set forth in*
 37 *this subdivision.* The commission may implement a core and
 38 noncore model on or after January 1, 2006, provided the
 39 commission has implemented rules and regulations that achieve all
 40 of the following:

(1) Permit specified electrical corporation customers with a single anchor meter with a maximum peak demand of at least _____ kilowatts to choose to become noncore customers and to purchase electricity directly from nonutility electric service providers *or to receive competitive service from a provider of last resort pursuant to paragraph (11)*. Aggregation of additional meters on contiguous property under the same ownership as the anchor meter may be permitted.

(2) Provide that noncore customers forgo both the benefits and future incurred costs of receiving bundled electricity service from the electrical corporations.

(3) Provide that the remaining core customers are served by the electrical corporation's electricity resource portfolio *and assume both the benefits and the future incurred costs of receiving bundled electricity service from the electrical corporation*.

(4) Require each electrical corporation to manage its electricity resource portfolio for the benefit of its core customers.

(5) Ensure electrical corporations and core customers fully compensatory and timely recovery of costs, including investments in long-term resource additions to the system, originally incurred to serve departing customers. *However, electrical corporations shall not incur new obligations for long-term resource additions to serve noncore eligible customers during the five-year phase-in period provided in paragraph (7)*.

(6) Provide for the full recovery of existing direct access customers' energy cost obligations from *those* existing direct access customers, on a schedule comparable to the recovery of comparable costs from core customers, either through refinancing the cost obligation, or *by* otherwise relieving core customers of the cost obligation.

(7) Provide for an election process whereby a customer with a single anchor meter with a maximum peak demand of at least _____ kilowatts shall make a permanent election to become a noncore customer *and purchase electricity directly from a nonutility electric service provider or receive competitive service from a provider of last resort pursuant to paragraph (11)*. The election process shall be phased in over no fewer than five years, and shall include maximum annual megawatt limits on the amount of load available to noncore customers for direct transactions (hereafter, yearly transition cap). The commission may establish these annual

1 megawatt limits, or yearly transition caps, in equal annual
2 amounts. *The election process shall also provide an opportunity*
3 *for a noncore eligible customer to make a binding declaration to*
4 *become a noncore customer in a future year, and thereby avoid cost*
5 *responsibility for any new obligation for long-term resource*
6 *additions made between the date of the noncore eligible customer's*
7 *binding declaration and the actual date the noncore eligible*
8 *customer becomes a noncore customer.*

9 (8) Require that, at the end of the transition period, each
10 customer with a single anchor meter with a maximum peak
11 demand of at least ____ kilowatts, who has not yet elected to
12 purchase electricity directly from nonutility electric service
13 provider, must make ~~a~~ *an affirmative* permanent election to either
14 remain with the electrical corporation or to purchase electricity
15 from a nonutility electric service provider *or to receive competitive*
16 *service from a provider of last resort pursuant to paragraph (11).*

17 (9) Require nonutility electric service providers to comply with
18 the resource adequacy requirements established by the
19 commission pursuant to this chapter, to ensure that there is no
20 adverse effect on the reliability, cost, or availability of electricity
21 for core customers.

22 (10) Require electric service providers to meet resource
23 adequacy requirements by first acquiring all available
24 cost-effective energy efficiency and demand reduction resources,
25 and comply with the requirements established pursuant to Article
26 16 (commencing with Section 399.11). The commission shall
27 establish an effective mechanism to independently measure and
28 verify acquisition of cost-effective energy efficiency and demand
29 reduction resources by electric service providers, consistent with
30 commission protocols for electrical corporations as existing on
31 January 1, 2005.

32 (11) Provide for a competitively bid, provider-of-last-resort
33 default electric service, for noncore customers.

34 (12) Restrict the ability of a noncore customer to return to
35 electric service from the electrical corporation. In the event that *the*
36 *commission finds that the retail market fails, and is no longer has*
37 *failed and the provider of last resort is no longer capable of*
38 *providing reliable electric service to noncore customers, electrical*
39 *corporation the electrical corporation shall provide electric*
40 *service to a returning noncore customer shall be provided at a fully*

1 compensatory rate, subject to standard contractual return
2 conditions that prevent any cost shifting.

3 (13) Demonstrate that a core and noncore model will support,
4 and not be detrimental to, system reliability and future investments
5 in electricity infrastructure and the objective of acquiring all
6 cost-effective energy efficiency and demand reduction resources,
7 *through the establishment, implementation, and enforcement of*
8 *resource adequacy requirements pursuant to Section 400.22 or*
9 *400.23.*

10 (14) Provide that customers that are purchasing electricity
11 pursuant to a direct transaction as of January 1, 2005, *as provided*
12 *by the commission pursuant to subdivision (b) of Section 365,*
13 including customers that qualify as core customers, may ~~choose~~
14 *make a one-time permanent election* to continue to purchase
15 electricity pursuant to a direct transaction, *to receive competitive*
16 *service from a provider of last resort pursuant to paragraph (11),*
17 or to return to electric service provided by the electrical
18 corporation. Those customers who choose to continue to purchase
19 electricity under a direct transaction *or to receive competitive*
20 *service from a provider of last resort pursuant to paragraph (11)*
21 shall be subject to the rules established for a noncore customer
22 pursuant to this section. The commission may authorize customers
23 that are purchasing electricity pursuant to a direct transaction as of
24 January 1, 2005, and who choose to continue to purchase
25 electricity under a direct transaction pursuant to this chapter, to
26 aggregate additional meters located on contiguous property under
27 the customer's same ownership, *even if the customer's anchor*
28 *meter has a maximum peak demand of less than ____ kilowatts.*

29 (15) Provide that the adoption of rules and regulations required
30 by this section, and the adoption of resource adequacy
31 requirements pursuant to this chapter, are a prerequisite for the
32 implementation of a core and noncore market authorized pursuant
33 to this chapter.

34 (b) The commission shall annually prepare and submit to the
35 Legislature and the Governor a report detailing the status of the
36 noncore retail market established pursuant to this section,
37 including, but not limited to, the following:

38 (1) The number, type, size, and location of noncore customers,
39 including the total load electing to purchase electricity through
40 direct transactions.

(2) The amount of new generation capacity built to serve the noncore retail market.

~~(3) The prices paid by noncore customers for electricity.~~

(c) The report shall be reviewed by an independent auditor each year, who shall report to the commission, the Legislature, and the Governor on any impacts on the price, availability, or reliability of electricity for core customers resulting from the implementation of a noncore retail market. The commission shall consider the report of the independent auditor, and shall take all actions necessary to ensure that core customers continue to receive reliable electric service at just and reasonable rates, including, but not limited to, deferring further phase in of the noncore retail market until new generating capacity is built to serve the *noncore* retail market.

(d) In designating the earliest possible date for implementation of a community choice aggregation program, the commission shall ensure that there will be no cost-shifting or stranding of investments made pursuant to a long-term integrated resource plan of the electrical corporation that has been approved by the commission pursuant to Section 400.11. *In considering approval of the electrical corporation's long-term integrated resource plan, the commission shall also ensure that the plan includes a reasonable estimate of the customer load departure through Community Choice Aggregation, as such estimate is provided for by a Community Choice Aggregator pursuant to Section 366.2.*

400.22. (a) All electrical load serving entities, including nonutility electric service providers and community choice aggregators, shall be subject to the same requirements for resource adequacy, resource diversity, and the renewable portfolio standard, that are applicable to electrical corporations pursuant to this section, as required by other law, or as required by order or decision of the commission.

(b) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure *that* adequate physical generating capacity dedicated to ~~serve~~ *serving* all load requirements is available to meet peak demand and planning and operating reserves, ~~at a location and at a time~~ *locations and at times* as may be necessary to ensure local area reliability and system reliability, ~~on a least-cost-to-ratepayers basis.~~ *at just and reasonable rates.*

(c) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities *and their customers, either by requiring all load serving entities to meet the requirements individually, or by directing the electrical corporation to secure the resources necessary to meet resource adequacy requirements and allocating the costs thereof to all customers pursuant to Section 400.23.*

~~(d) The cost of meeting~~ To the extent that the resources necessary to meet resource adequacy requirements are provided by an electrical corporation pursuant to Section 400.23, the costs of *meeting those* resource adequacy requirements, including the costs associated with system reliability and local area reliability, shall be equitably borne by and recoverable from all customers on a pro rata, fully compensatory basis, *that cannot be bypassed*, pursuant to rates that are just and reasonable, as determined by the commission.

(e) Resource adequacy requirements established by the commission shall provide for, *and ensure*, all of the following:

(1) ~~Grid~~ System-wide and local area grid reliability.

(2) Adequate physical generating capacity dedicated to serve all load requirements, including planning and operating reserves, where and when it is needed.

~~(3) Investment in new generating capacity.~~

(3) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(4) Market power mitigation.

(5) Deliverability.

(6) Resource commitments by load serving entities at least three years in advance of need, in order to ensure that new resources can be constructed if necessary to meet the need.

(f) Load serving entities may procure physical generating capacity through a market-based mechanism, provided that ~~the mechanism achieves~~ the commission, after a hearing, determines that there is convincing factual evidence that the mechanism will achieve all of the following:

(1) Adequate physical generating capacity dedicated to serve all load requirements when and where the electricity is needed, including planning and operating reserves *to ensure local area reliability and system reliability.*

1 ~~(2) Adequate investment in new generating capacity.~~

2 (2) *Adequate and timely investment in new generating capacity*
3 *to meet future load requirements, including planning and*
4 *operating reserves.*

5 (3) Electricity that is purchased through the market is
6 deliverable to the load for which it is purchased.

7 (4) Reliability of the electrical grid is not impaired.

8 (5) A prospective market monitoring process ~~is in place that is~~
9 *and market power mitigation measures are in place that are*
10 *sufficient to ensure a well-functioning wholesale electricity*
11 *market.*

12 (g) The commission shall adopt rules and regulations necessary
13 to enforce resource adequacy requirements established pursuant to
14 this section. Pursuant to its authority to revoke or suspend
15 registration pursuant to Section 394.25, the commission shall
16 suspend the registration for a specified period, or revoke the
17 registration, of an electric service provider that fails to comply
18 with the rules and regulations adopted by the commission to
19 enforce resource adequacy requirements.

20 (h) The commission's implementation of resource adequacy
21 requirements in accordance with this section shall be a prerequisite
22 for the implementation of a core and noncore market authorized
23 pursuant to this chapter.

24 (i) For purposes of this chapter, "load serving entity" does not
25 include a local publicly owned electric utility as defined in Section
26 9604, the State Water Resources Development System commonly
27 known as the State Water Project, or customer generation. For
28 purposes of this subdivision, "customer generation" means
29 cogeneration, renewable technologies, or any other type of
30 generation that is dedicated wholly or in part to serve a specific
31 customer's load and that relies on nonutility or dedicated utility
32 distribution wires, rather than the utility grid, to serve the
33 customer, the customer's affiliates, or the customer's tenants, or
34 not more than two other persons or corporations. Those two
35 persons or corporations must be located onsite or adjacent to the
36 real property on which the generator is located. "Customer
37 generation" includes distributed energy resources as defined in
38 Section 353.1 and ultraclean and low-emission distributed
39 generation as defined in Section 353.2.

1 400.23. *Notwithstanding any other provision of this chapter,*
2 *to ensure that adequate physical generating capacity dedicated to*
3 *serve all load requirements is available to meet peak demand and*
4 *planning and operating reserves, at locations and at times as may*
5 *be necessary to ensure local area reliability and system reliability,*
6 *the commission may order electrical corporations to procure,*
7 *schedule, and dispatch capacity to meet resource adequacy*
8 *requirements on behalf of all customer load, including load served*
9 *by nonutility electric service providers, provided all of the*
10 *following conditions are met:*

11 (a) *The Independent System Operator shall provide detailed*
12 *instructions to the electrical corporation as to where and when and*
13 *in what amount resources are needed to meet local area reliability.*

14 (b) *The instructions of the Independent System Operator shall*
15 *be adopted as upfront achievable standards and criteria as part of*
16 *the electrical corporation's procurement plan approved by the*
17 *commission pursuant to Section 454.5.*

18 (c) *The Independent System Operator and the commission shall*
19 *provide market power mitigation measures to ensure that the costs*
20 *incurred to procure resources pursuant to Section 454.5 necessary*
21 *to meet resource adequacy requirements, including local area*
22 *reliability, peak demand, and planning and operating reserves, are*
23 *just and reasonable.*

24 (d) *The costs of meeting resource adequacy requirements shall*
25 *be allocated on a cost-based basis to each customer class, based*
26 *on the contribution of each class of customers to the electrical*
27 *corporation's system peak demand.*

28 (e) *The allocation of costs of meeting resource adequacy*
29 *requirements shall be made in a manner to ensure that there are no*
30 *stranded costs, and no cost shifting between customer classes or*
31 *between customers of an electrical corporation and customers of*
32 *another load serving entity.*

33 (f) *The costs of meeting resource adequacy requirements shall*
34 *be recovered from all customers on a fully compensatory basis*
35 *each year, pursuant to rates that are just and reasonable, through*
36 *a transmission and distribution charge that cannot be bypassed.*

37 400.30. *To ensure that the utility's obligation to provide*
38 *customers with reliable electric service at just and reasonable rates*
39 *is met by an electrical corporation, the commission shall adopt*

1 rules and regulations consistent with the policies and provisions of
2 this chapter.

3 400.40. Nothing in this chapter shall alter or affect any
4 outcome of a competitive procurement process conducted by an
5 electrical corporation pursuant to any other law, including Section
6 454.5, prior to January 1, 2005.

7 400.50. Nothing in this chapter shall alter or affect the
8 implementation of the California Renewables Portfolio Standard
9 Program pursuant to Article 16 (commencing with Section
10 399.11).

11 *400.60. Nothing in this chapter limits the ability of any*
12 *customer to participate in a Community Choice Aggregation*
13 *program pursuant to Section 366.2.*

14 SEC. 6. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

